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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1912~~ 1913

No. ~~500~~ 206

LAURA G. WHITE, APPELLANT,

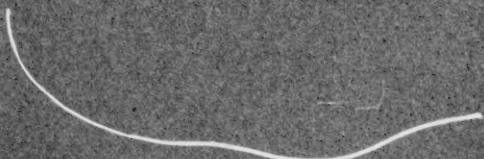
vs.

ISLAND TRANSPORTATION COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF WASHINGTON.

FILED MARCH 5, 1912.

(23,080)



(23,080)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No 568.

LAURA G. WHITE, APPELLANT,

vs.

ISLAND TRANSPORTATION COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF WASHINGTON.

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a No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer "Fairhaven," for Limitation of Liability.

Apostles on Appeal.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

1 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer "Fairhaven," for Limitation of Liability.

Names and Addresses of Counsel.

E. B. Stevens, Esq., Proctor for Respondent and Appellant, 309-311 Bailey Building, Seattle, Washington.

M. J. Gordon, Esq., Proctor for Respondent and Appellant, 309-311 Bailey Building, Seattle, Washington.

P. C. Sullivan, Esq., Proctor for Respondent and Appellant, 309-311 Bailey Building, Seattle, Washington.

Alpheus Byers, Esq., Proctor for Petitioner and Appellee, 507 Colman Building, Seattle, Washington.

Ovid A. Byers, Esq., Proctor for Petitioner and Appellee, 507 Colman Building, Seattle, Washington.

2 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292. In Admiralty.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Co., a Corporation, Owner of the Steamer Fairhaven, for Limitation of Liability.

Petition.

To the Honorable C. H. Hanford, Judge of the District Court of the United States for the Western District of Washington, Northern Division:

The libel and petition of the Island Transportation Company owner of the steamer Fairhaven in a cause of action civil and maritime, respectfully shows:

Art. 1.

Your petitioner is a corporation, duly created, organized and existing under and by virtue of the laws of the State of Washington, having its principal office at Seattle and owns and runs a line of steamboats between Seattle, La Conner and other points in the State of Washington, on Puget Sound, for the carriage of passengers and freight between said points; and at all times hereinafter mentioned your petitioner was the sole owner of said steamboat "Fairhaven" which was engaged in the carriage of cargo and passengers in said line as aforesaid.

Art. 2.

That on or about the 29th day of July, 1909, while the said steamer "Fairhaven" was engaged in commerce upon the navigable waters of the United States within this District, and as a common carrier of passengers for hire and upon the waters of Puget Sound and was plying regularly in the carriage of such passengers between the port of Seattle and the port of La Conner and elsewhere, and on or about noon of that day was proceeding on Puget Sound aforesaid between the stations or ports on her said route. The said "Fair-

haven" was at that time manned and equipped in full compliance with the laws of the United States and the rules of navigation in such case made and provided and was carrying each, every, and all of the lights, equipment and appliances required by the laws and rules and was fully found in every particular and was constructed in all particulars in compliance with the rules established by the laws of the United States.

Art. 3.

As she was proceeding on the said voyage, one L. G. White, who claims to have been a passenger on the said boat, in walking on the deck of said boat, and at or about noon on the said day, claims to have been injured by falling over a rod, known as a hog chain, in the said vessel, but in truth and in fact the said White was injured on account of her own fault and negligence and not on account of any fault in the management, care or equipment, construction or control or of any fault whatever of said vessel or its owner.

Art. 4.

That the "Fairhaven" had at the time thirteen (13) passengers and had earned as fares and as freight the following amounts:

Passengers	\$10.75	
Freight	42.70	
		\$53.45

and she was at the time of the alleged accident as aforesaid, under the care, charge and command of C. C. Cadwell, Master, duly licensed in full compliance with the laws of the United States and rules of navigation in such case made and provided and was fully manned and equipped as hereinabove set forth.

That none of her owners were on the boat or present or had any knowledge of said accident or the cause thereof, until after the time of its occurrence.

Art. 5.

It is claimed by the said White and may be claimed by others on board said boat that by and because of the carelessness and negligence of the employés of this petitioner, in the proper handling of said vessel, and in not furnishing them safe and proper facilities or in not informing them of dangerous conditions, that the said White was injured and she has brought suit against your petitioner as the owner and operator of said boat in the Superior Court of the State of Washington for the County of King for damages by and because of said accident in the sum of Twenty-one Thousand Three Hundred and fifty and 87/100 Dollars and said suit is now pending, and the value of said "Fairhaven" does not exceed the sum of \$10,000.

Art. 6.

That your petitioner has a valid and meritorious defense to the claim of the said White or any claim that may be brought against your petitioner or the said vessel by any other passengers by and because of the fact that the said accident was without fault of your petitioner or of the said vessel as hereinabove set forth.

Art. 7.

Your petitioner on the facts and circumstances aforesaid, desires and claims the benefit of limitation of liability according to the maritime law and practice, and the laws of the United States in such case made and provided and in manner and form as prescribed by the rules and practice in matters of maritime nature.

Your petitioner further says that the said accident occurred without the design, negligence, privity, or knowledge of your petitioner.

That all and singular the premises herein are true and within the admiralty and maritime jurisdiction of this Court.

Wherefore your petitioner respectfully prays for a proper relief in that behalf and that you will be pleased to cause due appraisement to be had of the value of said steamboat in the condition in which she was immediately after said accident; and upon the ascertaining of the value, make an order for payment thereof into

5 Court or for the giving of a stipulation with sureties thereof for payment into Court whenever the same shall be ordered, pursuant to law and the rules and practice of this Court and for monition against all persons claiming such loss, damage or injury and all other persons having any claim of whatsoever nature against the said vessel, citing them and each of them to appear in this Court and make due proof of their respective claims on or before a certain time to be made in said writ; and that public notice of said monition may be given according to law and the rules and practice of this Court in matters maritime. As to all such claims your petitioner

will contest its liability and the liability of its vessel independently of the limitation of liability claimed as aforesaid; and that the said White as plaintiff in the suit aforesaid and all other persons who may hereafter make similar or other claims may all, each and every of them be severally restrained from further prosecution of said suit and all and every suit or suits against your petitioner with regard to any such claim or claims; and your petitioner further prays that it may have such other and further relief as it may be entitled to under the rules and practice of this Court in maritime matters.

ISLAND TRANSPORTATION COMPANY,

By JAMES D. ESARY, *President*.

BYERS & BYERS,

Proctors for Petitioner.

6 STATE OF WASHINGTON,
County of King, ss:

Jas. D. Esary being first duly sworn on oath deposes and says: that he is the President of the Island Transportation Company, a corporation, petitioner in the within and foregoing petition; that he has read the same, knows the contents thereof and that the matters therein stated are true as he verily believes and he verifies this petition for and on behalf of the Island Transportation Company.

JAMES D. ESARY,

Subscribed and sworn to before me this 2nd day of June, 1910.

ALPHIUS BYERS,

*Notary Public in and for the State of
Washington, Residing at Seattle.*

Indorsed: Petition. Filed in the U. S. District Court, Western District of Washington, June 3, 1910. R. M. Hopkins, Clerk.

7 In the District Court of the United States in and for the
Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Co., a Corporation, Owner of the Steamer "Fairhaven," for Limitation of Liability,

Answer to Petition.

Comes now Laura G. White and makes the following answer to the petition herein.

I.

This respondent objects to the same:

(a) For the reason that the petition discloses on its fact that this honorable court does not have jurisdiction in the premises, it ap-

appearing from the petition that the facts stated are not sufficient to bring the petitioner within the statutes of the United States commonly known as the limitation of liability acts.

(b) For the reason that it affirmatively appears by Article III of the petition that the claim of this respondent is made because of an injury received by falling over a rod known as a hog chain, which was a part of the construction of said vessel.

Wherefore respondent asks that said petition and all proceedings thereunder be dismissed.

II.

This respondent, not waiving the foregoing objections to the petition further answers.

1. That the claim of respondent against petitioner is based upon the following facts:

That on or about the 29th day of July, 1909 respondent purchased from defendant a ticket entitling her to be transported on said steamer "Fairhaven" from the City of Seattle to Juan de Fuca in Island County, in the State of Washington and that thereafter on or about said 29th day of July, 1909 on account of said ticket and contract for carriage and transportation incident thereto entered upon said steamer and became a passenger of said defendant for hire.

That the said steamer "Fairhaven" is commonly known as a stern wheeler and was and is provided with decks and cabins for the convenience and accommodation of passengers. That through the stern or after deck iron rods or chains extend for the purpose of holding and supporting the paddle wheel used in propelling said steamer; said rods or chains being commonly known as hog chains and running through said deck and extending above it at an angle of about fifty degrees from the perpendicular; that the deck surrounding on all sides the said rods or hog chains was designed and intended for the use of and was used at the time of the accident herein referred to and at all other times for the accommodation and convenience of passengers and seats were permanently affixed and provided for passengers on the surrounding sides of said deck adjacent to said rods or hog chains. That said rods or hog chains were part of the original and permanent construction of the said vessel and were placed there with the knowledge and acquiescence of the petitioner. That the respondent claims that for the safety of the respondent and other passengers on said steamer it was and became the duty of the petitioner to properly box and safeguard said rods or hog chains so as to prevent respondent or other passengers from becoming entangled in or injured by their presence or location and that

9 at the time of the alleged accident hereinafter mentioned the petitioner had failed and neglected to make any provision for the safety of respondent and other passengers in that behalf and had utterly failed and neglected to properly box or safeguard said rods or hog chains. And your respondent alleges that your petitioner at all times knew and has known that said rods or hog chains were not boxed or safeguarded and had at all times known that the seats were provided for passengers, to be used by passengers around

and about said rods or hog chains and that such seats around and about said rods or hog chains were constantly and daily used by passengers.

2d. Your respondent further sets forth that on or about said 29th day of July, 1909 while a passenger on said steamer "Fairhaven" and while standing on the rear deck thereof she started toward the dining room or saloon of said steamer and without fault on her part stepped back and turned so as to approach said dining room and in so doing the heel of respondent's shoe became wedged and fastened in the angle between the deck and one of said rods or hog chains in such manner as to prevent the respondent from *eccavating* her said foot and thereby caused her to fall to the deck of said steamer breaking the neck of the femur of her right leg in consequence of which respondent has claimed and claims now that she was permanently injured for life. Respondent further says that in addition to the damages to her physically she has been put to the expense of nurses, doctor's bill and drug bills and care in an amount since said accident in a sum amounting to about \$3,000 and respondent claims her damages for physical injuries in the sum of \$20,000.

3d. That by reason of the premises this court has not jurisdiction to grant the petition of the Island Transportation Co. if the foregoing facts are true, the said Island Transportation Co. not being entitled to the benefit of the Acts of Congress relating to the limitation of liability.

4th. And this respondent further shows that on the 2nd day of October, 1909 the respondent commenced an action in the Superior Court of the State of Washington in and for King County against the petitioner, Island Transportation Co., to recover the sum of \$20,000 for injuries to her person, caused as hereinbefore alleged and the further sum of — for special damages for moneys paid out by her prior to the beginning of the action and for doctors, nurses, drugs, and medicines. In which action respondent claimed that her injuries were received by reason of the negligence of said Island Transportation Co. in maintaining the rods and hog chains upon said vessel as hereinbefore referred to; that such proceedings were had upon objections of Island Transportation Co. that an amended complaint or complaints were filed and were held by the said Superior Court of the State of Washington to constitute a just cause of action on behalf of respondent in said action; that an answer was filed in said cause by the Island Transportation Co., the petitioner herein, in which answer the said company alleged:

"That the said steamer "Fairhaven" is a stern wheel steamer and is provided with decks and cabins for the convenience and accommodation of passengers; that the iron rods passing through the deck of the said steamer for the purpose of holding and supporting the paddle wheel used in propelling said steamer, are a part of the construction of the said vessel, and were built in the said vessel

11 at the time the same was constructed in the same manner that they were at all times mentioned in the complaint herein, and that they are a necessary and integral part of the said vessel, and are the same and constructed in the same way and manner of all other vessels of her class.

That the said vessel has operated on the same run for fifteen years last past with the rods, decks and cabins located and built as the same were at the time of the alleged accident and no similar or other injury had even occurred on account of the same, and that the manner in which said rods were constructed in the said boat is the approved and ordinary manner in which they are used in the construction of all vessels of this class and is the same as used in the best boats of this class, and that the plaintiff herein was well acquainted with the said boat.

That the rods or hog chains were in plain sight and could be seen by anyone looking at the spot and were seen and known to be by the plaintiff herein in the condition in which they were before and at the time of the alleged injury."

Which said allegations were made by said Island Transportation Co. as a defense to said action of respondent. That said answer was made under oath of one H. B. Lovejoy, who swore that he was the manager of said company, and which oath was to the effect that he had read the answer and knew the contents thereof and believed the same to be true.

5th. That by reason of the premises set forth in the last preceding paragraph the said Island Transportation Co. ought not to be permitted now to take the benefit of the Acts of Congress relating to limitation of liability and is and should be estopped from asserting that they are entitled to the benefits of said Acts of Congress.

6th. That the respondent duly filed a reply to said answer in said court, which reply was verified by the oath of P. C. Sullivan as attorney for plaintiff in said action, and said Sullivan being one of respondent's proctors in this proceeding, which reply was filed on or about the 27th day of January, 1910.

That on the 7th day of May, 1910 said cause being at issue and set down for trial on the merits, and for trial by jury, the same was at the date aforesaid set to be tried on the 7th day of June, 1910. That notwithstanding this the petitioner herein, and defendant in said action, did not take any steps whatsoever to obtain the benefit of the limited liability Acts until three or four days before the 7th day of June and on Saturday preceding the 7th day of June said Island Transportation Co. procured from this court an injunction against respondent proceeding with the trial of said cause, which injunction has been obeyed by respondent and her attorneys in that action.

That the petitioner here and defendant in said action in said proceeding in the State court had not before claimed the benefit of the limited liability acts.

7th. That by reason of the premises aforesaid the said Island Transportation Co. ought not now to be allowed to receive the benefit of the said limited liability acts of Congress and should be estopped from taking the benefit thereof.

8th. The respondent further alleges that the facts are such that the petitioner is not entitled to take the benefit of the limited liability acts and joins issue with the petitioner thereon and asks that the court determine this question before it proceeds further in said matter.

9th. Further answering the said petition this respondent admits the allegations contained in Articles 1 and 2, except that part of allegation 2 which reads as follows: "and was constructed in all particulars in compliance with the rules established by the Laws of the United States," which allegation respondent denies and alleges in this connection that the said rods or hog chains in said vessel hereinbefore referred to were so constructed in said vessel as to be unsafe to passengers and were not safely and properly safeguarded.

10th. For answer to Article 3 this respondent admits she was proceeding on the said voyage referred to as aforesaid on said boat and that *on* or about noon on the day therein referred to she claims to have been injured by falling over a rod known as a hog chain in said vessel and alleges in this connection that she was so injured by the heel of her shoe being caught in the angle between said hog chain and the deck hereinbefore referred to. She denies that she was injured on account of her own fault or negligence and alleges that it was solely on account of the negligence of the said company and denies that said injury was not caused on account of any fault in the management, care, equipment or construction or control or of any fault whatever of said vessel or its owner.

11th. As to the matters alleged in article 4 of the said petition this respondent states that she does not have any knowledge or information as to any of the matters therein alleged and therefore if this be a material allegation as to her asks the court that the petitioner be put on proof as to the matters and things alleged in said Article 4.

12th. As to the matters and things alleged in Article 5 respondent admits that she has brought suit in the Superior Court of the State of Washington in and for King County for \$21,357.87 and that said suit is now pending.

Respondent says she has no information as to the value of the said steamer "Fairhaven" except that since this suit was brought appraisers appointed by this court have appraised the value of said boat in the sum of \$10,000 and respondent further says that the basis of her cause of action and her claim against said Island Transportation Co. is as hereinbefore set forth in this answer and not otherwise.

13th. Respondent denies all of the matters and things alleged in Article 6 of the petition and denies that the petitioner has a valid or meritorious defense to claim of respondent or any claim that may be brought against the petitioner or the said vessel of any other passengers by or because of the fact that the said accident was without fault of the petitioner or of the said vessel.

14th. As to the matters and things alleged in Article 7 of the petition the respondent denies that the accident occurred without the design, negligence, privity or knowledge of the petitioner.

And your respondent denies the statement therein contained in said article that all and singular the premises of the petition are true and within the admiralty jurisdiction of this court and on the contrary your respondent alleges that the matters and things contained in said petition are not true and are not within the admiralty jurisdiction of this honorable court.

15 15th. Respondent alleges that she has duly filed a claim with A. C. Bowman as required by the monition and rules of court.

Wherefore your respondent prays that the said petition of the Island Transportation Co. and all proceedings thereunder be dismissed and that it be adjudged that the petitioner is not entitled to the benefit of the limited liability acts of Congress and that she be permitted if such dismissal is granted to show the amount of costs, disbursements and expenses she has been put to by reason of the said application of petitioner and the injunction granted thereunder and that she recover from said Island Transportation Co. said costs, expenses and disbursements.

P. C. SULLIVAN,

Proctors for Respondent, Laura G. White.

16 STATE OF WASHINGTON,
County of King, ss:

P. C. Sullivan, first being duly sworn and on his oath deposes and says: That he is the proctor for respondent in the above entitled cause; that he is the same person who is described in the injunction granted in said proceedings as being one of the attorneys for plaintiff (respondent here) in the action referred to in said injunction; that said respondent is at Colorado Springs, State of Colorado, and has been there for several months last past, that on account of her absence he verifies this answer on her behalf; That he has had personal charge of the conduct of the action referred to in the Superior Court of the State of Washington for King County and is now acting as her attorney therein and is authorized by her to make this verification: That upon the trial of any matters of fact requiring her testimony she will appear in person upon a reasonable notice or will give her testimony before the Commissioner at Colorado Springs and answer any interrogatories that may be propounded to her. Affiant further says that he has read the foregoing answer and believes the things therein stated to be true.

P. C. SULLIVAN.

Subscribed and sworn to before me this 22nd day of June, 1910.

[SEAL.]

R. W. HUNTOON,

Notary Public in and for the State of Washington, Residing at Seattle.

Service by receipt of copy admitted at Seattle, Washington, this 22d day of June, 1910.

BYERS & BYERS,

Proctors for Petitioner.

17 Indorsed: Answer to Petition. Filed in the U. S. District Court, Western Dist. of Washington, June 23, 1910. R. M. Hopkins, Clerk.

18 In the District Court of the United States in and for the
Western District of Washington, Northern Division.

No. 4292. In Admiralty

In the Matter of the Petition of THE ISLAND TRANSPORTATION
Company, a Corporation, Owner of the Steamer Fairhaven, for
Limitation of Liability.

Motion to Dismiss.

Comes now Laura G. White, and moves the Court to dismiss the
petition in this cause, and all proceedings thereunder, for the follow-
ing reasons:

I.

That this court does not have jurisdiction of the subject matter
of the proceeding, nor of the respondent, Laura G. White.

II.

That it appears upon the face of the petition, and the other
pleadings in the said cause, that the facts stated are not sufficient to
bring the petitioner within the statutes of the United States, com-
monly known as the limitation of liability acts.

This motion is based upon the petition, the claim of Laura G.
White, and the objections made by the petitioner to the claim of
Laura G. White, and all pleadings and records in the cause.

P. C. SULLIVAN,

E. B. STEVENS,

Proctors for Laura G. White.

STATE OF WASHINGTON,

County of King, ss:

P. C. Sullivan, being first duly sworn on his oath deposes and says:
That he is one of the Proctors in Admiralty for Laura G. White;
that he has read the foregoing motion, knows the contents thereof,
and believes same to be meritorious and well founded in law, and
that it is not made for the purpose of delay.

P. C. SULLIVAN.

Subscribed and sworn to before me this 30th day of November,
1910.

[SEAL.]

EDWIN B. STEVENS,

*Notary Public in and for the State of Wash-
ington, Residing at Seattle.*

19 Service of the within Motion by delivery of a copy of the undersigned is hereby acknowledged this 30th day of November, 1910.

BYERS & BYERS.
Attorneys for Island Transportation Co.

Indorsed: Motion to Dismiss. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 2, 1910, R. M. Hopkins, Clerk.

20 In the District Court of the United States in and for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer Fairhaven, for Limitation of Liability.

Decree.

It appearing to the Court that the respondent, Laura G. White, has not made proof of claim in the above entitled matter, and it appearing that respondent, Laura G. White, has heretofore made a motion to dismiss the petition and all proceedings thereunder upon the ground and for the reason that this Court does not have jurisdiction of the subject matter of the proceeding nor of the respondent, Laura G. White, and upon the ground that the facts stated in the petition and other pleadings in said cause are not sufficient to bring the petitioner within the statutes of the United States, commonly known as Limitation of Liability Acts, said motion of respondent's having been heard and denied by this honorable Court, and the said respondent having taken exceptions to the ruling of this honorable Court upon said motion, and the exceptions having been allowed and it appearing to the Court that the said respondent has refused to move further in the proceeding, although she has had ample time so to do, and wishes to stand upon her exceptions made and allowed at the time of the denial of the said motion.

It is hereby ordered, adjudged and decreed that judgment in the above entitled action be awarded to the petitioner, Island Transportation Co. and that the respondent, Laura G. White, take nothing by this action.

Done in open Court this 25th day of September, 1911.

C. H. HANFORD, *Judge.*

Indorsed: Decree. Filed in the U. S. District Court, Western Dist. of Washington, Sept. 19, 1911, F. A. Simpkins, Acting Clerk.

- 21 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer "Fairhaven," for Limitation of Liability.

Petition upon Appeal.

Respondent, Laura G. White, conceiving herself aggrieved by the decree made and entered on the 25th day of September, 1911, in the above entitled cause, does hereby appeal from the said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 20th day of November, A. D. 1911.

M. J. GORDON AND

E. B. STEVENS,

Proctors for Respondent, Laura G. White.

The foregoing claim of appeal is allowed.

C. H. HANFORD,

District Judge.

Indorsed: Petition on Appeal. Filed in the U. S. District Court, Western District of Washington, Nov. 20, 1911. A. W. Engle, Clerk, by F. A. Simpkins, Deputy.

- 22 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer Fairhaven, for Limitation of Liability.

Certificate of Jurisdiction.

In this case I hereby certify that the only question in issue coming before this Court was a question of jurisdiction. The petitioner, Island Transportation Company, a corporation, in the above entitled matter, came into this Court by virtue of the statutes of the United States, commonly known as the Limitation of Liability Acts. The respondent in her answer to the petition herein, among other

things, objected to the jurisdiction of his Court, and thereafter made a formal motion to dismiss the petition in this cause, and all the proceedings thereunder, on the following grounds:

First. That this Court did not have jurisdiction of the subject matter of the proceeding nor of the respondent, Laura G. White.

Second. That it appeared upon the face of the petition and the other pleadings in said cause that the facts stated were not sufficient to bring the petitioner within the statutes of the United States, commonly known as the Limitation of Liability Acts, for the reason that there is but one claim only, and there is nothing in the petition or the other pleadings in said cause, which shows the existence of any other claim nor shows any ground for apprehending the existence of any other claim. And for the further reason that it appears that the negligence charged is that of the owners of the vessels solely, and within their privity and knowledge, and not the result of any acts of the officers or crew, nor was the damage, for which recovery is sought, the result of any perils of the sea.

23 In passing upon the aforesaid motion this Court denied the same, and held that it did have jurisdiction of both the person and the subject matter of the proceeding, and that the facts stated in the petition of the Island Transportation Company were sufficient and proper to take the proceeding away from the jurisdiction of the Superior Court of King County, in and for the State of Washington, and held further that the facts stated in said petition were sufficient to bring the proceeding within the statutes of the United States, commonly known as the Limitation of Liability Acts, thereby giving this Court the jurisdictional right to determine the liability of the petitioner as to the claim for damages of the respondent; thereupon an exception was allowed and the respondent stood upon her motion. Thereafter and in pursuance thereof, and for the purpose of this appeal, a final decree was entered, reciting the above facts and decreeing that respondent take nothing by this action.

This certificate is made conformably to Act of Congress March 3, 1891, Chapter 517, and the other pleadings herein pertaining and necessary to the question of jurisdiction are made a part of the record and will be certified and sent up as part of the proceedings, together with this certificate.

Dated this 6th day of December, A. D. 1911.

C. H. HANFORD,

*District Judge of the United States for the
Western District of Washington, North-
ern Division.*

Indorsed: Certificate of Jurisdiction. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 6, 1911. A. W. Engle, Clerk, by F. A. Simpkins, Deputy.

- 24 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer Fairhaven, for Limitation of Liability.

Order.

Respondent, Laura G. White having presented her petition for an appeal and an assignment of errors accompanying the same, said petition upon consideration of the Court is hereby allowed, and the Court allows an appeal to the Supreme Court of the United States from the order, judgment and decree heretofore rendered by this Court in said proceeding as specified in said petition and assignment of errors.

It is further ordered that the bond for costs on said appeal be and the same is hereby fixed in the sum of Three Hundred Dollars.

C. H. HANFORD,
District Judge.

Indorsed: Order. Filed in the U. S. District Court, Western District of Washington, Nov. 21, 1911. A. W. Engle, Clerk, by F. A. Sumpkins, Deputy.

- 25 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer Fairhaven, for Limitation of Liability.

Assignment of Errors.

The Respondent, Laura G. White prays an appeal from the final decree of this Court to the Supreme Court of the United States and assigns for error:

First. That the Court erred in its order and judgment made on the 5th day of December, 1910, wherein and whereby it overruled and denied this respondent's motion to dismiss the petition of the Island Transportation Company, and all proceedings thereunder, for the reason that the Court did not have jurisdiction of the subject matter of the proceeding.

Second. That the Court erred in its order and judgment of December 5th, 1910, overruling and denying this respondent's motion to dismiss the petition of the Island Transportation Company for the

reason that it appears upon the face of the petition of the said Island Transportation Company, and the other pleadings in the cause, that the facts stated are not sufficient to bring said Island Transportation Company, petitioner, within the statutes of the United States, commonly known as the Limitation of Liability Acts.

Third. That the Court erred in not granting and allowing this respondent's motion to dismiss the petition of the Island Transportation Company, for the reason that the Court was without jurisdiction of the subject matter of the proceeding as appeared upon the face of the petition of said Island Transportation Company, and the other pleadings in said cause.

Fourth. That the Court erred in not granting and allowing this respondent's motion to dismiss the petition of the Island Transportation Company, for the reason that there is but one claim only. 26 and there is nothing in the petition or other pleadings in said cause which shows the existence of any other claim, nor shows any ground for apprehending the existence of any other claim.

Fifth. That the Court erred in rendering the judgment and decree of September 25th, 1911, awarding judgment to the petitioner, Island Transportation Company, and adjudging and decreeing that this respondent, Laura G. White take nothing by this action, for the reason that it appears upon the face of the petition of the Island Transportation Company and other pleadings in said cause that the Court was without jurisdiction of the subject matter and without jurisdiction to make and render said judgment and decree.

Wherefore, this Respondent, Laura G. White prays that the said order, judgment and decree of the said District Court be reversed.

M. J. GORDON AND
E. B. STEVENS.

Proctors for Respondent, Laura G. White.

Indorsed: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 20, 1911. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

27 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer Fairhaven, for Limitation of Liability.

Bond on Appeal.

Know all men by these presents, That we, Laura G. White, as principal, and National Surety Company, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound unto the Island Transportation Company, a corporation, in the full and just sum of Three hundred (\$300.00) dollars,

to be paid the said Island Transportation Company, its successors, attorneys and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 5th day of December, A. D., in the year of our Lord One thousand nine hundred eleven.

Whereas, lately in the District Court of the United States, for the Western District of Washington, Northern Division, in a suit pending in said Court entitled "In the Matter of the Petition of the Island Transportation Company, a corporation, owner of the Steamer Fairhaven, for Limitation of Liability," a decree was rendered against the said Laura G. White, and the said Laura G. White having obtained an appeal and filed a copy thereof in the Clerk's office of said Court, to reverse the decree in the aforesaid suit, and a Citation directed to the said Island Transportation Company, a corporation, citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the — day of —, 1912.

28 Now the condition of the above obligation is such that if the said Laura G. White shall prosecute her appeal to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void, else to remain in full force and virtue.

LAURA G. WHITE.

By E. B. STEVENS.

Proctor for Principal.

NATIONAL SURETY COMPANY.

By GEO. W. ALLEN, *Attorney in Fact.*

[SEAL.]

Sealed in the presence of

R. B. ROBERTSON.

EDW. P. WELCH.

Approved by

C. H. HANFORD,

District Judge.

Indorsed: Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 6, 1911. A. W. Engle, Clerk.
By F. A. Simpkins, Deputy.

29 In the District Court of the United States for the Western
District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION
Company, a Corporation, Owner of the Steamer "Fairhaven," for
Limitation of Liability.

Stipulation.

Whereas the Respondent, Laura G. White, in the above en-
titled matter objected to the jurisdiction of the above named Court
in her answer to the petition and by interposing a motion to dismiss
the petition of the Island Transportation Company on the grounds
that the Court did not have jurisdiction of either the subject mat-
ter of the proceeding or of the Respondent, Laura G. White. The
Court having denied the motion of Respondent the Respondent stood
upon her motion and refused to move further in the proceeding,
whereupon a final decree was entered without proof being taken,
proof being waived, as to the allegations of the petition, which de-
cree awarded judgment to the petitioner, Island Transportation Com-
pany, and adjudged and decreed that this Respondent Laura G.
White, take nothing by this action, from which final judgment and
decree the Respondent is prosecuting an appeal to the Supreme Court
of the United States.

It is hereby stipulated by and between the undersigned attorneys
for the petitioner, Island Transportation Company, and attorneys
for the Respondent, Laura G. White, in the above entitled matter,
that the transcript of record to be filed in the Supreme Court of the
United States for the purpose of an appeal to said Court allowed in
the above entitled cause, shall include the following papers or plead-

ings, to-wit:

30 Petition of Island Transportation Company for Limitation
of Liability.

Answer to petition.

Motion of Laura G. White to dismiss petition.

Decree.

Petition on appeal.

Certificate of Jurisdiction.

Order allowing appeal.

Assignment of errors.

Citation and service of same.

Bond upon appeal.

Stipulation as to transcript of record.

BYERS & BYERS,

Attorneys for Petitioner.

M. J. GORDON AND

E. B. STEVENS,

Attorneys for Respondent.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Feb. 19, 1912. A. W. Engle, Clerk. By S. Deputy.

31 In the District Court of the United States in and for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer "Fairhaven," for Limitation of Liability.

Præcipe.

To the Clerk:

You are requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following papers or pleadings, to-wit:

Petition of Island Transportation Company for Limitation of Liability.

Answer to Petition

Motion of Laura G. White to Dismiss Petition.

Decree.

Petition on Appeal.

Certificate of Jurisdiction.

Order Allowing Appeal.

Assignment of Errors.

Citation and Service of Same.

Bond on Appeal.

Stipulation.

This Præcipe.

M. J. GORDON AND
E. B. STEVENS,
Attorneys for Appellant.

Indorsed: Præcipe. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 6, 1911. A. W. Engle, Clerk, By F. A. Simpkins, Deputy.

32 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer "Fairhaven," for Limitation of Liability.

Citation.

THE UNITED STATES OF AMERICA, ss:

The President of the United States to the Island Transportation Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within sixty (60) days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States, for the Western District of Washington, Northern Division, and filed in the Clerk's office of said Court on the 21st day of November, A. D. 1911, in the City of Seattle, State of Washington, in a cause wherein Laura G. White is Appellant and you Appellee, to show cause, if any, why the decree entered against the Appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. H. Hanford, District Judge, of the District Court of the United States in and for the Western District of Washington, Northern Division, this 21st day of November, A. D. 1911.

[Seal of the United States District Court, Western District of Washington.]

C. H. HANFORD,
District Judge.

Indorsed: Original. No. 4292. In the District Court of the United States, Western District of Washington, Northern Division. In the Matter of the Island Transportation Company, a corporation, owner of the Steamer "Fairhaven," for Limitation of Liability. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 21, 1911. A. W. Engle, Clerk. By F. A. Simpkins, Deputy. M. J. Gordon and E. B. Stevens, 309-311 Bailey Bldg., Seattle, Washington, Proctors for Respondent, Laura G. White.

33 We hereby accept due personal service of the within Citation this 6th day of December, 1911.

BYERS & BYERS,
Proctors for Appellee.

34 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer "Fairhaven," for Limitation of Liability.

Clerk's Certificate to Transcript of Record.

UNITED STATES OF AMERICA,

Western District of Washington, ss:

I, A. W. Engle, Clerk of the District Court of the United States, for the Western District of Washington, do hereby certify the foregoing thirty-three typewritten pages, numbered from 1 to thirty-three (33) inclusive, to be a full, true and correct copy of the record and proceedings in the above and foregoing entitled cause as is called for by the Præcipe of the Proctors for Respondent and Appellant and Stipulation of Proctor for Petitioner and Appellee, as the same remain of record and on file in the office of the Clerk of the said Court, and that the same constitutes the apostles on appeal from the order, judgment and decree of the District Court of the United States for the Western District of Washington, to the Supreme Court of the United States.

I further certify that I hereto attach and herewith transmit the Original Citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing apostles is the sum of Six and 40/100 — (\$6.40) and that the said sum has been paid to me by E. B. Stevens, M. J. Gordon and P. C. Sullivan, Proctors for Respondent and Appellant.

35 In testimony whereof I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 19th day of February, 1912.

[Seal of the United States District Court, Western District of Washington.]

ABRAHAM W. ENGLE, *Clerk.*

36 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4292.

In the Matter of the Petition of THE ISLAND TRANSPORTATION Company, a Corporation, Owner of the Steamer Fairhaven, for Limitation of Liability.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Island Transportation Company, a corporation. Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within sixty (60) days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States, for the Western District of Washington, Northern Division, and filed in the Clerk's office of said Court on the 21st day of November, A. D. 1911, in the City of Seattle, State of Washington, in a cause wherein Laura G. White is appellant and you Appellee, to show cause, if any, why the decree entered against the appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. H. Hanford, District Judge, of the District Court of the United States in and for the Western District of Washington, Northern Division, this 21st day of November, A. D. 1911.

[Seal of the United States District Court, Western District of Washington.]

C. H. HANFORD,

District Judge.

37 [Endorsed:] Original. H. In the District Court of the United States, Western District of Washington, Northern Division. No. 4292. In the Matter of the Petition of the Island Transportation Company, a corporation, owner of the Steamer Fairhaven, for Limitation of Liability. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Nov. 21, 1911. A. W. Engle, Clerk. By F. A. Simpkins, Deputy. M. J. Gordon and E. B. Stevens, 309-311 Bailey Bldg., Seattle, Washington, Proctors for Respondent Laura G. White.

We hereby accept due personal service of the within citation this 6th day of December, 1911.

BYERS & BYERS,

Proctors for Appellee.

Endorsed on cover: File No. 23,080. W. Washington D. C. U. S. Term No. 568. Laura G. White, appellant, vs. Island Transportation Company. Filed March 5th, 1912. File No. 23,080.

OCT 13 1913

JAMES D. MAHE

CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1912

LAURA G. WHITE,

Appellant,

VS.

ISLAND TRANSPORTATION COMPANY,

Appellee.

No. 540-2

APPEAL FROM THE DISTRICT COURT OF
THE UNITED STATES, FOR THE WEST-
ERN DISTRICT OF WASHINGTON.

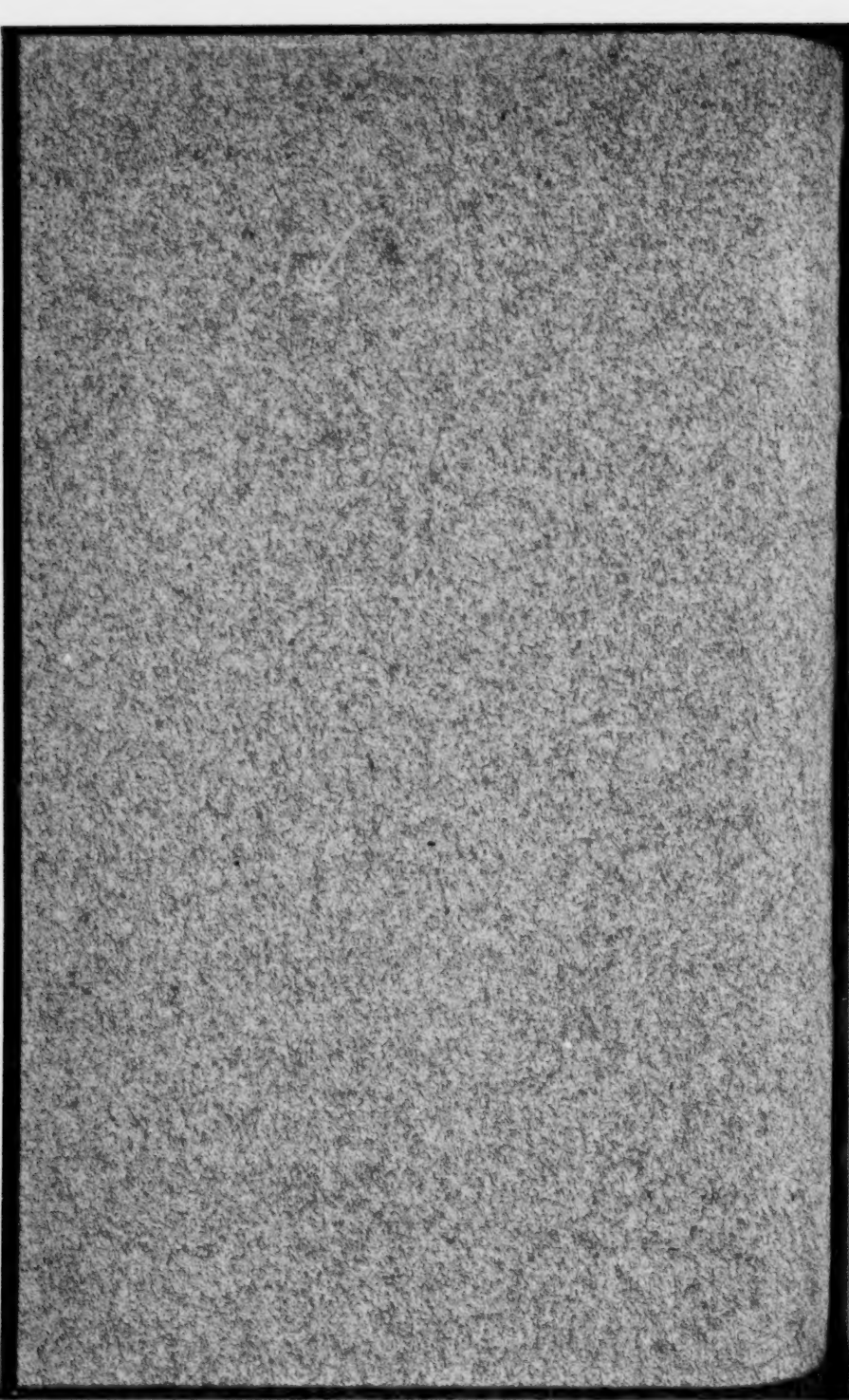
BRIEF OF APPELLANT

M. J. GORDON,

P. C. SULLIVAN, and

E. B. STEVENS,

Proctors for Appellant.



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1912

LAURA G. WHITE,

Appellant,

VS.

ISLAND TRANSPORTATION COMPANY,

Appellee.

No. 568

APPEAL FROM THE DISTRICT COURT OF
THE UNITED STATES, FOR THE WEST-
ERN DISTRICT OF WASHINGTON.

BRIEF OF APPELLANT

The appellant herein commenced an action in the Superior Court of the State of Washington, for King County, against the appellee, to recover damages for an injury to her person while a passenger on the steamer "Fairhaven," on the 29th day of July, 1909.

The steamer was commonly known as a stern-wheeler, and was provided with decks and cabins for the convenience and accommodation of its passengers. Through the stern or after-deck, iron rods extended for the purpose of holding and supporting the paddle wheel used in propelling the vessel. The rods—commonly known as hog-chains—ran through the deck extending above it at an angle of about fifty degrees from the perpendicular.

The appellant had been standing on the deck close to one of these rods and her right heel had become wedged or fastened in the angle formed between the deck and the rod or hog-chain, in such a manner as to cause her to fall when she thereafter started to walk to the dining room. In falling, the neck of the femur of her right leg was broken and she was permanently injured. (Paragraphs 1 and 2, Answer to Petition, pp. 5 and 6, Transcript of Record. Article 3 of Petition, p. 2, Transcript of Record.)

The answer, filed in said cause by the appellee, among other things admitted that it was operating the stern-wheeler "Fairhaven," and alleged that the iron rods were a part of the construction of the vessel and were built in at the time the vessel was constructed. (Page 6, Transcript of Record.)

The cause being at issue was set down for trial by jury on the 7th day of June, 1910. Thereupon

appellee filed its petition in the District Court of the United States for the Western District of Washington, Northern Division, for a limitation of liability, under the Federal Statutes commonly known as "Limitation of Liability Acts,"

Rev. Stat. §§ 4282-4287,

U. S. Comp. Stat. 1901, pp. 2943-2944,

and appellant was enjoined from proceeding in the action pending in the state court.

Thereafter, in the District Court, appellant answered the petition, in which answer she excepted to the jurisdiction of the District Court for the reason that it appeared from the petition that the facts stated therein were not sufficient to bring the petitioner within the statutes of the United States, commonly known as "Limitation of Liability Acts;" and that from Article 3 of the petition, it appeared that the claim of the appellant was to recover for an injury received while a passenger, in falling over a rod known as the hog-chain, which was part of the construction of the vessel. Without waiving the exception, the appellant further answered, setting up affirmatively in detail the facts upon which the claim for damages of the appellant rested. (Page 5, Transcript of Record.)

Thereafter appellant moved to dismiss the petition of the appellee and all the proceedings thereunder, for the reasons already stated. This motion

was based upon the petition of appellee for limitation of liability, the objections thereto of the appellant, and all the pleadings and records in said cause. (Transcript, page 10.)

The motion to dismiss was denied and appellant, electing to stand upon her exceptions, a decree was entered that appellant take nothing by her action. This appeal follows.

ASSIGNMENT OF ERRORS.

1

The Honorable District Court erred in its order and judgment made and entered on the 5th day of December, 1910, wherein it overruled and denied the appellant's motion to dismiss the petition of appellee for a limitation of liability, and all proceedings thereunder, for the reason that the Court did not have jurisdiction of the subject matter of the proceedings.

II.

The Honorable District Court erred in its order and judgment entered December 5th, 1910, overruling and denying this appellant's motion to dismiss the petition of appellee for a limitation of liability, for the reason that it appears upon the face of the petition of said Island Transportation Company, and the other pleadings in the cause, that the facts stated are not sufficient to bring the said Island

Transportation Company within the statutes of the United States, known as "Limitation of Liability Acts."

III.

The Honorable District Court erred in not granting the appellant's motion to dismiss the petition of the Island Transportation Company, for the reason that the said Court was without jurisdiction of the subject matter of the proceedings, as appeared upon the face of the petition of said Island Transportation Company, and the other pleadings in said cause.

IV.

That the Honorable District Court erred in not granting and allowing appellant's motion to dismiss the petition of appellee for a limitation of liability, for the reason that there was but one claim only, and there is nothing in the petition or other pleadings in said cause to show the existence or ground for apprehending the existence of any other claim.

V.

The Honorable District Court erred in its decree of September 25th, 1911, awarding judgment to the petitioner, Island Transportation Company, and adjudging and decreeing that the appellant, Laura G. White, take nothing by this action, for the reason that it appears on the face of the petition for limitation of liability and other pleadings in said cause

that the Court is without jurisdiction of the subject matter and without jurisdiction to make and render said judgment and decree.

ARGUMENT.

The different assignments present but a single question, which may be stated as follows: Do the limited liability acts of Congress extend to appellant's cause of action, as that cause of action is disclosed by the record?

Section 4283, Compiled Stat. of 1901 (page 2943), reads as follows:

"The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, lost, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

Additional or supplementary thereto, is Section 18, Ch. 121, Act of June 26th, 1884, which reads as follows:

"That the individual liability of a ship-owner, shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight

pending; *provided*, That this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship-owners."

In the somewhat recent case of

Richardson vs. Harmon, 222 U. S. 96,

this Court exhaustively reviewed the cases arising under the former section and also considered the effect of the latter section on the substantive law. On this latter point you said:

"We therefore conclude that the section in question (Sec. 18, Act of 1884) was intended to add to the enumerated claims of the old law 'any and all debts and liabilities' not therefore included. * * Thus construed, the section harmonizes with the policy of limiting the owner's risk to his interest in the ship in respect of all claims arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime, *but leaves him liable for his own fault, neglect, and contracts.*"

The injury for which the appellant sought recovery did not arise out of the conduct of the master or crew, but *from the fault and negligence of the owners* in improperly constructing a vessel which it thereafter devoted to the carriage of passengers for hire. The improper construction consisted in placing iron rods (commonly called hog-chains) in the stern or after-deck of the vessel, which rods

extended above the deck at an angle of about fifty degrees from the perpendicular, these rods being for the purpose of supporting the paddle-wheel used in propelling the steamer. The deck surrounding the rods or hog-chains on all sides being designed and intended for use of passengers, raised the duty on the part of the appellee to properly box or safeguard the rods or hog-chains for the safety of the passengers using the deck in their vicinity. See Paragraph 3 of Petition (Transcript, page 2), Paragraph 2 of Answer (Transcript, page 5), and the answer of the appellee to the appellant's complaint in the state court, set forth in paragraph 4 of appellant's answer to the petition (Transcript, page 6).

From this latter reference it will be seen that in its answer to the complaint in the state court, appellee expressly asserted, "That the said steamer 'Fairhaven' is a stern-wheel steamer and is provided with decks and cabins for the convenience and accommodation of passengers; that the iron rods passing through the deck of the said steamer for the purpose of holding and supporting the paddle-wheel used in propelling said steamer, *are a part of the construction of the said vessel, and were built in the said vessel at the time the same was constructed* in the same manner that they were at all times mentioned in the complaint herein, and that they are a

necessary and integral part of the said vessel
 * * * etc."

It will thus be seen that the claim which the appellant was asserting was one predicated on negligent construction by the owner, as contradistinguished from any negligence arising out of the conduct of the master and the crew.

It will not be gainsaid that the law devolved upon the appellee as a common carrier of passengers for hire the duty of providing safely constructed and properly equipped boats engaged in such carriage, so far as the exercise of the highest degree of care, prudence and foresight might contribute toward making them safe.

Philadelphia & Reading Ry. Co. vs. Derby,
 14 Howard 485,

Steamboat New World vs. King, 16 Howard
 469,

Pennsylvania R. Co. vs. Roy, 102 U. S. 451,

Stokes vs. Saltonstall, 13 Pet. 181,

Railroad Co. vs. Pollard, 22 Wall. 341,

Williams vs. S. F. & N. Ry. Co., 39 Wash. 77,

Firebaugh vs. Seattle Electric Co., 40 Wash.
 658.

Since the owner had the right to design and construct this vessel according to its own plan, it would seem to follow, as a necessary sequence, that an injury to a passenger which is the result of im-

proper construction, must be attributed to the fault of the owner, rather than that of the master and crew. To state the case is to argue it, and it is submitted that the decree of the learned District Court should be reversed.

Respectfully submitted,

M. J. GORDON,

P. C. SULLIVAN, and

E. B. STEVENS,

Proctors for Appellant.

23

Office Supreme Court, U. S.

FILED

FEB 26 1914

JAMES D. MAHER

CLERK

IN THE
**Supreme Court of the
United States**

OCTOBER TERM, A.D. 1912

LAURA G. WHITE,

Appellant,

vs.

ISLAND TRANSPORTATION COMPANY,

Appellee.

No. 568-206

APPEAL FROM THE DISTRICT COURT OF
THE UNITED STATES, FOR THE WEST-
ERN DISTRICT OF WASHINGTON.

BRIEF OF APPELLEE

OVID A. BYERS,

ALPHEUS BYERS,

Proctors for Appellee.

THE HISTORY OF THE

UNITED STATES

OF AMERICA

BY JAMES OSGOOD

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1912

LAURA G. WHITE,

Appellant,

VS.

ISLAND TRANSPORTATION COMPANY,

Appellee.

No. 568

APPEAL FROM THE DISTRICT COURT OF
THE UNITED STATES, FOR THE WEST-
ERN DISTRICT OF WASHINGTON.

BRIEF OF APPELLEE

The only question involved in this appeal is that of jurisdiction; not jurisdiction to render the decree, for that is not criticised, but whether the Court had jurisdiction to entertain the proceeding, and the record has been transmitted only so far as ap-

pellant deemed necessary for a determination of that question.

If it appears, therefore, from the averments in the petition taken as proved, that the Court had jurisdiction for any purpose, the cause must be affirmed.

That the facts there alleged or admitted do show jurisdiction in admiralty, we think is established both by reason and authority.

The assignments of errors, save as to the fourth assignment, are vague and indefinite, and do not call either to the attention of this Court or the District Court anything more specific than the motion itself. So it becomes practically necessary in order to present the cause, to show not that the assignments are not meritorious, but to show affirmatively that the Court had jurisdiction.

The petition contains the usual allegations and (Art. 5, page 3, Transcript of Record) "that it is claimed by the said White, and may be claimed by others on board said boat, that by and because of the negligence of the employees of this petitioner in the proper handling of said vessel and in not furnishing them safe and proper facilities or in not

informing them of dangerous conditions, that the said White was injured, and she has brought suit against petitioner," etc.

The Court must assume the allegations to be true, until the contrary is established.

Appellee denied all the claims of the said White. Those claims aggregated Twenty-three Thousand Dollars (Transcript of Record, page 6), more than double the value of the vessel, which was alleged did not exceed Ten Thousand Dollars in value (Transcript of Record, page 3). It was also alleged, that, if the accident did happen, it was without the design, negligence, privity or knowledge of the libellant (Art. 7, Transcript of Record, page 3).

The appellant had no legal right to a dismissal for lack of jurisdiction until her denials of the allegations of appellee's petition were established by proof satisfactory to the Court. Appellant recognizes this (Art. 8, Transcript of Record, page 7) and alleges:

"The respondent further alleges that the facts are such that the petitioner is not entitled to take the benefit of the limited liability acts and *joins issue* with the petitioner thereon and asks that the Court determine this question before it proceeds further in said matter."

It is true that Article 3 of the petition states that the said White claimed to be injured by falling over a rod known as a hog chain, but Article 5 sets forth other and additional claims she alleged.

The appellee further alleged that the said accident occurred without privity or knowledge, or that appellee had any knowledge of the injury or its cause until after the time of its occurrence. (Art. 4, Transcript of Record, page 3, and Art. 7, Transcript of Record, page 4.)

The procedure taken by appellee was that provided by the fifty-fourth admiralty rule and outlined by this Court in *Providence & N. Y. S. S. Co. vs. Hill Mfg. Co.*, 109 U. S. 378, and we think is correct in every particular.

This Court has, in *Butler vs. Boston S. S. Co.*, 130 U. S. 527, used the following language:

“We think that the law of limited liability applies to cases of personal injury and death as well as to cases of loss or injury to property. This conclusion is decisive of the controversy arising on the libel of the appellants for, if the law applies to the case of personal injuries, it was then the duty of the libellants to have appeared in the case of limited liability instituted by the owners of the vessel, and to have contested there the question whether, in the particular case, the owners were or were not entitled to the benefit of the law. Had

the action of the appellant been first commenced, it would have been suspended by the institution of the limited liability proceedings and the very object of those proceedings was not only to stop the prosecution of actions already commenced, but to prevent other suits from being brought. Allegations that the owners, themselves, were in fault, cannot affect the jurisdiction of the Court to entertain a cause of limited liability for that is one of the principal issues to be tried in such cause."

While the objections to the claim of appellant are not set forth in the record, the record does show that there were objections filed as the Motion to Dismiss (Par. 2, Transcript of Record, page 10), "is based on the petition, the claim of Laura G. White, and the objections made by the petitioner to the claim of Laura G. White."

But the record goes still further than this. The allegations of the petition of appellee are, for the purpose of this cause, proved; for the stipulation provides:

"Whereupon a final decree was entered without proof being taken, proof being waived." (Transcript of Record, page 17.)

"And thereafter and in pursuance thereof and for the purpose of this appeal, a final decree was entered." (Transcript of Record, page 13.)

There is one further point to be discussed: The fourth assignment of error. This seems to

have been abandoned by the appellant as no argument is made with regard to this assignment in the brief served upon us. This may be, either because the great weight of authority is against appellant's contention, or because the facts of this case do not accord with the assignment. The record discloses that there were two claims filed by appellant—one for damages for physical injuries, in the sum of Twenty Thousand Dollars, and one for expenses incurred for medicines and medical attendance in the sum of Three Thousand Dollars.

Whether one claimant files many claims or many claimants file one claim each, the result will be, practically, the same, and it would not seem probable that by an assignment of many claims to a single person, that that person could bring an action in the State Court, and defeat the beneficent purposes of the law and prevent a limitation of liability. As far as we have been able to discover, even assuming, for the sake of argument, that there is but one claim, there are only three decisions that would tend to sustain appellant's assignment number four.

These are:

The Rosa, 53 Fed. 132.

The Eureka, 108 Fed. 672.

The Lotta, 150 Fed. 719.

And even in "The Lotta," where the District Court attempted to follow the law as laid down in "The Rosa" and "The Eureka," the Court nevertheless only entered an order dissolving the injunction, and did not dismiss the cause for want of jurisdiction, for the reason:

"That, if it should hereafter appear in the course of the proceedings in the State Court that a question is raised as to the right of petitioner to a limited liability, this Court has exclusive cognizance of such a question."

Indeed, the limitation of liability is preeminently a question of admiralty jurisdiction and it has been held practically from the foundation of the government

"That admiralty jurisdiction can only be exercised under the laws of the United States."

Janney vs. The Columbia Insurance Company, 10 Wheaton, 336.

That a motion to dismiss ought not to be granted, even if there be but one claim is held in

The Hoffmans, 171 Fed. 455.

The Southside, 155 Fed. 364.

In re Starin, 124 Fed. 101.

The S. A. McCauley, 99 Fed. 302.

Quinlan vs. Pew, 5 C. C. A. 438.

and inferentially, at least, in

Providence vs. N. Y. S. S. Co., 130 U. S. 527.

We respectfully submit that the decision of the learned District Court should be affirmed.

Respectfully submitted,

OVID A. BYERS,

ALPHEUS BYERS,

Proctors for Appellee.



WHITE *v.* ISLAND TRANSPORTATION COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON.

No. 206. Submitted January 26, 1914.—Decided April 13, 1914.

The jurisdiction of a district court in a proceeding in admiralty to limit the liability of a ship owner, under Rev. Stat., §§ 4283 *et seq.*, is not ousted merely because a damage claimant puts in issue the allegation in the petition or libel that the damage was occasioned without the privity or knowledge of the owner. *Buller v. Boston Steamship Co.*, 130 U. S. 527.

In a proceeding in admiralty under Rev. Stat., §§ 4283 *et seq.*, questions of fact, whether jurisdictional or otherwise, are to be settled by a trial; and where the petition alleges that the damage or injury, liability for which is sought to be limited, was occasioned without the privity or knowledge of the owner, and the damage claimant waives proof of that allegation, it must be taken as true, and there will be no defect of jurisdiction in that regard.

Under Rev. Stat., §§ 4283 *et seq.*, and admiralty rules 53-57, a proceeding to limit the liability of the ship owner may be maintained whether there be a plurality of claims or only one.

THE facts, which involve the construction and application of the statutes regarding limitation of liability of vessel owners, are stated in the opinion.

Mr. M. J. Gordon, Mr. P. C. Sullivan and Mr. E. B. Stevens for appellant:

The limited liability acts of Congress do not extend to appellant's cause of action, as that cause of action is disclosed by the record. Section 4283, Comp. Stat. 1901, p. 2943. As additional or supplementary thereto, see § 18, c. 121, act of June 26, 1884; *Richardson v. Harmon*, 222 U. S. 96.

The injury for which the appellant sought recovery did not arise out of the conduct of the master or crew, but

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from the fault and negligence of the owners in improperly constructing a vessel which it thereafter devoted to the carriage of passengers for hire.

The claim which the appellant was asserting was one predicated on negligent construction by the owner, as contradistinguished from any negligence arising out of the conduct of the master and the crew.

The law devolved upon the appellee as a common carrier of passengers for hire the duty of providing safely constructed and properly equipped boats engaged in such carriage, so far as the exercise of the highest degree of care, prudence and foresight might contribute toward making them safe. *Phila. & Reading Ry. Co. v. Derby*, 14 How. 485; *Steamboat New World v. King*, 16 How. 469; *Penna. R. R. Co. v. Roy*, 102 U. S. 451; *Stokes v. Saltonstall*, 13 Pet. 181; *Railroad Co. v. Pollard*, 22 Wall. 341; *Williams v. S. F. & N. Ry. Co.*, 39 Washington, 77; *Firebaugh v. Seattle Electric Co.*, 40 Washington, 658.

Since the owner had the right to design and construct this vessel according to its own plan, it would seem to follow, as a necessary sequence, that an injury to a passenger which is the result of improper construction, must be attributed to the fault of the owner, rather than that of the master and crew.

Mr. Ovid A. Byers and Mr. Alpheus Byers for appellee.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

While a passenger on the steamboat *Fairhaven*, plying upon Puget Sound, Laura G. White sustained a severe personal injury in being caught or thrown by a rod, called a hog-chain, extending through the deck and connecting with the paddle-wheel. To recover for the injury she brought an action against the Island Transportation

Company, the owner of the vessel, in the Superior Court for King County, in the State of Washington, naming \$21,350.87 as her damages. The owner then filed a libel or petition in the District Court of the United States for that district to secure the benefit of the statute limiting the liability of vessel owners. Rev. Stat., §§ 4283-4285; Admiralty Rules, 53-57, 210 U. S. 562. The petition referred to the action in the state court, and alleged that the damage claimant was insisting that her injury was caused by "the carelessness and negligence of the employés" of the owner in handling the vessel, in not furnishing the passengers with safe and proper facilities, and in not informing them of dangerous conditions. It also alleged that the claimant was injured through her own negligence, without any fault in the construction, equipment, management, control or care of the vessel, and especially without the privity or knowledge of the owner; that there was a valid and meritorious defense to the claim; and that the value of the vessel did not exceed \$10,000. The petition, while insisting upon the right of the owner, under admiralty rule 56, to contest its liability and that of the vessel in that proceeding, prayed for an appraisalment of the vessel and her pending freight, for an order for the payment of the amount of the appraisalment into court or the giving of a stipulation with sureties for such payment whenever required, for the issuance of a monition in the usual form and upon the usual condition, for an order restraining the prosecution of the action in the state court, for a decree limiting the owner's liability, if any, and for other appropriate relief. Although laying no special basis for it, the petition also, in a general way, indicated that the owner apprehended other claims and actions of a like character, and the prayer for the monition and relief was so framed as to include them. After other steps in the proceeding which need not be noticed, the claimant answered alleging, in substance, that her

claim was founded solely upon the owner's negligence in that the hog-chain was part of the construction of the vessel, and, with the knowledge and acquiescence of the owner, was negligently left unboxed, uncovered and unguarded so that it endangered the passengers when upon the deck, in the place regularly assigned to them, and that her injury was caused by such negligence and not by any fault of her own. In addition, the answer contained this paragraph: "8th. The respondent further alleges that the facts are such that the petitioner is not entitled to take the benefit of the limited liability acts, and joins issue with the petitioner thereon and asks that the court determine this question before it proceeds further in the said matter." The claimant also moved to dismiss the proceeding for want of jurisdiction, upon the ground that the pleadings showed that the injury was attributable to negligence of the owner, and that the petition disclosed but one claim and laid no basis for apprehending the existence of others. The motion to dismiss was overruled, and an exception reserved. The claimant elected to stand upon the motion and refused to move further in the proceeding, whereupon, proof of the allegations of the petition "being waived," a final decree was entered for the owner adjudging that the claimant take nothing by the proceeding. This appeal followed, and a certificate was granted showing the grounds of the motion, the court's ruling, and the exception. See Judicial Code, § 238.

The objection that the court was without jurisdiction, because the pleadings showed that the damage was occasioned by the negligence of the owner, evidently resulted from a misapprehension of what was in the pleadings. So far were they from settling where the fault lay that they put the matter directly in issue, the petition alleging that the injury was occasioned without the owner's privity or knowledge and the answer affirming that it was caused by the owner's negligence and not otherwise. If the fact was

as alleged in the petition, the case was within the statute, for § 4283 declares: "The liability of the owner of any vessel . . . for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." And while the claimant was at liberty, under admiralty rule 56, to contest the owner's right to a limitation of liability, the decision of the question necessarily rested with the court. Its jurisdiction was not ousted merely because the claimant took issue with what was alleged in the petition. *Butler v. Boston Steamship Co.*, 130 U. S. 527, 552, 553. The questions of fact so presented were to be settled by a trial, and this was so whether the facts were jurisdictional or otherwise. But there was no trial. Instead of insisting that the allegations of the petition be proved, the claimant expressly waived proof of them, thereby consenting that they be taken as true. As they were plainly to the effect that the injury was without the privity or knowledge of the owner, there was no defect in the jurisdiction at that point.

The objection that the court could not entertain the proceeding, because the petition disclosed only one claim arising out of the injury, is grounded upon the terms of §§ 4284 and 4285, which require a *pro rata* distribution of the value of the vessel and freight when not sufficient to satisfy all claims, authorize proceedings to obtain the benefit of the statute, make the surrender of the vessel and freight for the benefit of claimants a sufficient compliance with the statute on the part of the owner, and declare that upon such surrender all claims and proceedings against the owner shall cease. It must be conceded that these sections, if taken alone, give color to the objection, for, with a single exception, their words apparently contemplate a plurality of claims. But to a right understand-

ing of these sections it is essential that they be read with § 4283. It contains the fundamental provision on which the others turn. It broadly declares that "the liability . . . for *any* . . . damage . . . occasioned . . . without the privity or knowledge of such owner . . . shall *in no case* exceed" the value of the vessel and freight. The succeeding sections are in the nature of an appendix and relate to the proceedings by which the first is to be made effective. Therefore, they should be so construed as to bring them into correspondence with it. It was so held in *Buller v. Boston Steamship Co.*, *supra* (pp. 550, 551), where it became necessary to consider another difference in terms between them and it. In that case this court said, quoting from a decision of the Supreme Court of Rhode Island: "These sections [4284 and 4285], if we look only to the letter, apply only to injuries and losses of property. The question is, therefore, whether we shall by construction bring the three sections into correspondence by confining the scope of § 4283 to injuries and losses of property, or by enlarging the scope of the two other sections so as to include injuries to the person. We think it is more reasonable to suppose that the designation of losses and injuries in §§ 4284 and 4285 is imperfect, a part being mentioned representatively for the whole, and consequently that those sections were intended to extend to injuries to the person as well as to injuries to property, than it is to suppose that § 4283 was intended to extend only to the latter class of injuries, and was inadvertently couched in words of broader meaning." In the lower Federal courts there has been some contrariety of opinion upon the point now being considered, but the prevailing view has been that due regard for the broad terms and dominant force of § 4283 requires that §§ 4284 and 4285 be construed as authorizing a proceeding for limitation of liability whether there be a plurality of claims or only one. *Quinlan v. Pew*, 56 Fed. Rep. 111, 120; *The S. A. McCaulley*,

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99 Fed. Rep. 302, 304; *The Hoffmans*, 171 Fed. Rep. 455, 457; Benedict's Admiralty, 4th ed., § 533. In the recent case of *Richardson v. Harmon*, 222 U. S. 96, where there was but a single claim, it was assumed by both court and counsel that a plurality of claims was not essential. We think that is the true view of the statute.

Decree affirmed.

